

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 160 OF 2018
IN
WRIT PETITION NO. 11097 OF 2018

Shikshan Sangharsha Sanghatana & Anr. ... Petitioners

Versus

State of Maharashtra & Ors. ... Respondents

Mr. S. S. Pakale I/by Mr. S. M. Katkar for Petitioners.

Mrs. M. P. Thakur, AGP for Respondent – State.

Mr. D. P. Singh for Respondent No.5 – Union of India.

CORAM : R. M. SAVANT AND
NITIN W. SAMBRE, JJ.

DATE : 23rd OCTOBER 2018.

P.C.

1. The above Review Petition has been filed seeking review of the orders dated 4th October 2018 and 11th October 2018 passed by us in the above Writ Petition which is one amongst a group of Writ Petitions which were filed challenging Clause 2 (2) of the Maharashtra Civil Services (Pension) Rules 1982 and the applicability of the Defined Contributory Pension Scheme (hereinafter be referred to as 'DCPS' for the sake of brevity) which is introduced by the Government Resolution dated 31st October 2015 and Government Resolution dated 29th November 2005.

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2. By the said order dated 4th October 2018, we had directed that such of the Petitioners who fall within the jurisdiction of the Aurangabad Bench and Nagpur Bench of this Court, be deleted from the cause title of the above Writ Petition and the companion Writ Petitions. We had also recorded the assurance of the learned Counsel for the Petitioners Mr. Pakale that he would pay the court-fees in respect of all the Petitioners in the said Writ Petitions.

3. Thereafter a praecipe was moved by the learned Counsel for the Petitioners for speaking to the minutes of the order dated 4th October 2018. The clarification was sought in respect of the payment of the court-fees which payment was required to be restricted to the Petitioners who fall within the jurisdiction of this Court i.e. the Principal Seat, as also as regards the deletion of the names of the Petitioners who fall within the jurisdiction of the Aurangabad Bench and Nagpur Bench of this Court.

4. We had accordingly clarified our order dated 4th October 2018 by recording that the court-fees payable would be in respect of the Petitioners who fall within the jurisdiction of this Court i.e. the Principal Seat. Insofar as the deletion of the Petitioners who fall within the jurisdiction of the Benches is concerned, we had observed that the assurance given by the learned Counsel in respect of deletion was in the

context of the direction which was issued vide the said order dated 4th October 2018. We had accordingly extended the time to comply with the directions as regards payment of court-fees and the deletion upto 9th October 2018.

5. It is required to be noted that the learned Counsel appearing for the Petitioners assured this Court in respect of the payment of the court-fees. Implicit in the said fact was the fact that the learned Counsel accepted the position that though the Petition was filed by the Kruti Samiti i.e. an Association, the beneficiary of the litigation would be the individual Petitioners, who were in large numbers, many of whom as indicated above fall within the jurisdiction of the Aurangabad and Nagpur Bench of this Court, as they are residing and working as Teachers/non teaching staff in schools within the jurisdiction of the said Benches.

6. The Writ Petitions amongst which was the above Writ Petition, were once again listed before this Court on 19th October 2018 to record compliance. The factum of the Review Petition being filed in the above Writ Petition was informed to us by the learned Counsel Mr. Saurabh Pakale. On the said date we noted the compliance in respect of the payment of the court-fees and granted time till 24th October 2018 i.e. tomorrow for compliance in respect of the deletion of such Petitioners who

fall within the jurisdiction of the Benches of this Court. The said order is a conditional order and that the Petitions would stand dismissed for non-prosecution, if the said order in the matter of deletion is not complied with by 24th October 2018.

7. Since the Review Petition was circulated before us yesterday i.e. 22nd October 2018, we have placed the above Review Petition for hearing today.

8. As indicated above, the review is sought of the orders dated 4th October 2018 and 11th October 2018, gist of which, we have already adverted to herein above. The review of the said orders is founded on the fact that the order in respect of the DCPS emanates from Mantralaya, Mumbai, which is the seat of the Government of Maharashtra and therefore substantial cause of action has arisen within the jurisdiction of this Court i.e. the Principal Seat. The fact that the Petitioner which is a Sanghatana i.e. Association and is espousing the cause of the Petitioners, who may be situated at different places and within the jurisdiction of the Benches of this Court, would not make any difference to the invocation of the jurisdiction of this Court i.e. the Principal Seat was sought to be urged.

9. Reliance is sought to be placed on Article 226 (2) of the

Constitution of India to buttress the contention that the substantial cause of action has arisen within the jurisdiction of this Court i.e. the Principal Seat. Reliance is also sought to be placed on a compilation of the Judgments which includes the Judgments of the Apex Court as well as the Full Bench Judgments of Allahabad High Court viz –

- (i) *AIR 1961 Supreme Court 532 in the matter of Lt. Col. Khajoor Singh V/s Union of India and another.*
- (ii) *2014(9) SCC 329 in the matter of Nawal Kishore Sharma V/s Union of India and others,*
- (iii) *1975 (2) SCC 671 in the matter of Nasiruddin V/s State Transport Appellate Tribunal.*
- (iv) The Full Bench Judgment of the Allahabad High Court reported in *1983 SCC OnLine All 638 in the matter of Umesh Chand Vinod Kumar and others V/s Krishi Utpadan Mandi Samiti, Bharthana sand another.*
- (v) The Division Bench Judgments of this Court viz –
2017(2) Mh.L.J. in the matter of Asif Shaukat Qureshi V/s State of Maharashtra and another.
- (vi) *2015(3) BCR 357 in the matter of Sanjay Son of Baldeo Ramteke V/s State of Maharashtra & others.*

10. The Apex Court in the said cases was concerned with the territorial jurisdiction of the High Courts, in the context of exercising jurisdiction under Article 226 of the Constitution of India. The Apex Court has held that the test of the place where a substantial or part of the cause of action would have to be applied. Insofar as the Judgments of this Court are concerned, the Division Benches of this Court have held that the objection regarding jurisdiction is to be decided on the facts pleaded in the Petition and that where the cause of action arose for the Petitioners to invoke the writ jurisdiction would determine the Bench before whom the Writ Petition can be filed. Insofar as the full bench Judgment of the Allahabad High Court is concerned, one of the issues before the full bench was whether an association of persons registered or unregistered can maintain a Petition under Article 226 of the Constitution of India for enforcement of its rights. The full bench answered the question by mentioning the circumstances under which the Petition filed by an Association is maintainable. In our view, the members of the Petitioner Association being teachers/non teaching staff do not fall within any of the categories mentioned by the full bench. In any event, the court-fees having been paid for each Petitioner who falls within the jurisdiction of this Court on behalf of whom the Petition is filed, it is not necessary for us to deal with the said issue. In our view, the Judgments (*supra*) are of no assistance

to the Petitioners to maintain a Petition on behalf of such Petitioners who fall within the jurisdiction of the Aurangabad and Nagpur Bench of this Court.

11. We are surprised with the manner in which the above Review Petition is sought to be prosecuted, especially having regard to the fact that the Petitioners who fall within the jurisdiction of the Aurangabad Bench and Nagpur Bench of this Court and in respect of whom the cause of action has arisen within the jurisdiction of the said Benches are not being rendered remedy-less by us. But we have only directed that they should approach the Aurangabad and/or the Nagpur Bench of this Court, as they are within the jurisdiction of the said Benches. However, for the reasons best known, the Writ Petitions that are required to be filed on behalf of the Petitioners who fall within the jurisdiction of the Benches are not being filed though cause of action for them has arisen within the jurisdiction of the said Benches. We are not impressed by the submission that since the impugned Government Resolutions emanate from Mantralaya, Mumbai i.e. the seat of the Government which falls within the jurisdiction of the Principal Seat, that this Court would have jurisdiction. It is not as if the Aurangabad and Nagpur Bench of this Court cannot go into or deal with

the legality or validity of orders/Government Resolutions passed/issued by the State Government which are challenged before the said Benches.

12. We are of the view that the Petitioners in question on whose behalf the above Petitions have been filed and for whom the cause of action has arisen within the jurisdiction of the Aurangabad and Nagpur Bench of this Court, are required to approach the said Benches. In the facts and circumstances of the present case, we are of the view that the Judgments *cited supra* would not support the case of the Review Petitioners to maintain the above Petition and the companion Petitions before the Principal Seat in respect of such of the Petitioners.

13. We do not find any error apparent on the face of the record as is sought to be contended on behalf of the Review Petitioners. No case for review, in any of the eventualities mentioned in Order 47 of the Code of Civil Procedure is made out.

14. The Review Petition is accordingly dismissed.

(NITIN W. SAMBRE, J.)

(R. M. SAVANT, J.)